UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 16th day of November, one thousand nine hundred and ninety-nine.

PRESENT: HON. JOSEPH M. McLAUGHLIN,
HON. DENNIS JACOBS,
HON. ROBERT A. KATZMANN,
Circuit Judges.

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Amilia ABBOTT; Kanvra Abdul-Karim; Edwin Acervedo; Carolyn Adams; Deborah Alston; Patricia Alston; Marlene Anaya; Annie Barnes; Charise Barnes; Sheila Batts; Jeanine

Bell; Cecilia Benique; Clinton Biet; Teresita Bowman; Elizabeth Browde; Annette Brown; Cora Brown; Jerelyn Brown; Leona Brown; Robert W. Brown; Roberta Brown; Ramona Bryan; Cheryl Burke; Sandra Byrd; Debbie Cannon; Pernice Carroll; Hazel Carter; Marsha Carter; Louise Chaneyfield; Sonia Clintron; Karen Cleveland; Toni Cleveland; Cora Cofield; Belinda Collier; Gwendolyn Cooper; Shirley Cooper; Shirley Corley; Antonia Creel; Deborah Davis; Kim D. Day; Ruby Dicks; Monique Dorsey; Douglas Drayton; Lovellan Dunton; Mary Dyson; Robert Edward; Beatrice Estwick; Kahesa Farmer; Sally Farmer; Margaret Fason; Carmen Feliciano; Sheri-Ann Felix; Paulette Ferguson; Francine Fortune; Latisha Frederick; Dorthy Mae Gainyard; Estelle Gibson; Geraldine Giles; Margaret Gillyard; Ethel Gladden; Modesto Gonzalez; Pamela Gordon; Concencia Gorman; Ernestine Green; Elsie Griffin; Joan Griffith; Sheila Grimes; Remona Hall; Rachel Henderson; Crystal Hollins; Sylvia Holman; Lorena Holme; Gloria Howard; Flora Hudson; Virginia Jackson; Deborah Jones; Ethel Jones; Mattie Jones; Odessa Jones; Gregory Kearse; Gladys Kendrick; Loretta Knox; Ronald Knox; Wanda Knox; Albert Langston; Barbara Lewis; Odessa McKenzie; Jean Mabry; Joseph Maddox; Arlene Madison; Donna Mahon; Darene Mallery; Gloria Marcus; Luz Martinez; Diane Mashburn; Addie Mazyck; Brenda Michel; Joann Mitchell; Theresa Moody; Letona Moffett; Willena Moore; Medgar Evers Houses Tenants Association; Grace Morgan; Rachael Morris; Shalon Murdaugh; Rochelle Murdaugh; Edwina Murphy; Kisha nelson; John Nixon; Lee Anne Ogbewele; Cheryl L. Page; Barbara Paign; Vonzella Palmer; Vickie Parker; Gale Patterson; Jean Penn; Rosetta Pattiford; Minnie

Pierce; Essie Porter; Emma Pratt; Ronnie Pullian; Thelma Pullian; Bettie Ramizee; Carol Reddick; Raquel Rivera; Fdella Robinson; Idela Robinson; Charlotte Rodgers; Lola Rodgers; Linda Roy; Marsha Roy; Jessie Sanders; Lena Settles; Latoya Shannon; Mary Shipman; Theodore Simmons; Sylvia Simpkins; Carrie Simpson; Onella Simpson; Hazel Smalls; Sharron Smith; Sonia Smith; Latisha Spencer; Picola Spencer; Janice Staton; Jocynthia Stokes; Johnie Stovall; Carol Sutton; Evelyn Sutton; Alison Taylor; Maxine Taylor; Chester Thomas; Karen Thomas; Laraine M. Thomas; Monica Thomas; Shirley Thomas; Shana Thompson; Tenyatta Turpin Gregory; Aisha Tyler; Beverly Vaden; Virginia Vaughan; Gladys Vice; Clarice Wade; June Wallace; Sonia Wallace; Patricia Washington; Alissa Webb; Dorothy White; Banquetta Whitt; Michele Wike; Kathleen Wildmon; Dorothy Williams; Lavon Williams; Michelle T. Williams; Sarah Williamson; Nacomis Wilson; Cassandra Womack; Bonnie Worley; Evelyn Worrell; Darlene Wortham; Ethel Wright; Tywanna Wright Gardner,

Plaintiffs-Appellants,

v.

MEDGAR EVERS HOUSES ASSOCIATES, L.P.; Philip Rosenberg; Douglas Rosenberg; BPC Management Corporation; New York City Department of Housing Preservation and Development; Seymour Maslow; Richard Curtis; New England Management Company, Inc.,

Defendants-Appellees;

United States Department of Housing and Urban Development,

Defendant.

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No. 98-6275.

Appearance for Appellant:

NAOMI J. SCHRAG, New York, NY, (Lisa E. Cleary, Frederick B. Warder, Patterson Belknap Webb & Tyler, LLP, Richard J. Wagner, Jim E. Provost, Brooklyn Legal Services Corp. A., on the brief).

Appearance for Appellee:

FRANKLYN H. SNITOW, New York, NY, (Robert P. Devlin, Snitow & Cunningham, LLP, on the brief).

Appeal from a final judgment entered on October 23, 1998 in the United States District Court for the Eastern District of New York, (Gleeson, J.)

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment is AFFIRMED.

Tenants in a federally subsidized low-income housing project brought this civil RICO suit against the owners and managers of the project alleging that the defendants engaged

in mail and wire fraud. It is alleged (i) that the defendants made false certifications regarding conditions at the project in monthly filings with the United States Department of Housing and Urban Development (HUD), and thereby induced the payment of federal subsidies; (ii) that the defendants submitted to HUD a series of false written statements assuring HUD that major repairs and improvements to the project were imminent; and (iii) that the defendants submitted to HUD monthly and annual financial statements that contained material misrepresentations about the project's operating costs. As a result of the alleged mail and wire fraud, the tenants claimed they "suffered the substantial diminution in both the value of their occupancies as well as in the value of the millions of entitlement dollars paid to the owner on behalf of [tenants] in the form of monthly rent subsidies."

The district court dismissed the complaint on the ground, inter alia, that the tenants could not establish that their injuries were proximately caused by the alleged RICO violation; the defendants made misrepresentations only to HUD, not to the tenants directly.

The district court's analysis, which is consistent with then-existing precedent, has been further supported by later decisions of this court. To state a claim under RICO, the tenants must allege that their "injuries were both factually and proximately caused by the alleged RICO violation." *In re American Express Co. Shareholder Litig.*, 39 F.3d 395, 399 (2d Cir.1994) (citing *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 266 68 (1992)). "The causation

requirement, which is jurisdictionally mandated, has two different components. There must be 'transaction causation,' meaning that the misrepresentation must have led the plaintiffs to enter into the transactions at issue, and there must be 'loss causation,' meaning that the misrepresentation must be both an actual and a proximate source of the loss that the plaintiffs suffered." *Moore v. PaineWebber, Inc.*, 189 F.3d 165, 169 70 (2d Cir.1999) (*citing First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 769 (2d Cir.1994)).

The tenants here failed to establish loss causation because they failed to establish that the defendants' misrepresentations were a proximate source of the tenants' injuries. "[T]o plead a direct injury is a key element for establishing proximate causation, independent of and in addition to other traditional elements of proximate cause. Thus, the other traditional rules requiring that defendant's acts were a substantial cause of the injury, and that plaintiff's injury was reasonably foreseeable, are additional elements, not substitutes for alleging (and ultimately, showing) a direct injury." *Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229, 235 36 (2d Cir. 1999). As the district court concluded, the tenants can allege no direct injury because the defendants' misrepresentations were made only to HUD. The tenants' injuries are therefore necessarily derivative of injuries sustained by HUD. Because such derivative injuries are insufficient to establish proximate cause, see id. at 235-36, 238-39, the tenants cannot establish the loss causation necessary for RICO standing.

Accordingly, for the reasons set forth above, the final judgment entered on October 23, 1998 is hereby AFFIRMED.

United States District Court,
E.D. New York.

MEDGAR EVERS HOUSES TENANTS ASSOCIATION, et al.,

Plaintiffs,

v.

MEDGAR EVERS HOUSES ASSOCIATES, L.P., The United States Department of Housing and Urban Development, et al.,

Defendants.

No. 97-CV-2919 (JG).

Oct. 23, 1998.

Naomi Schrag, Patterson Belknap Webb & Tyler LLP, New York City, Richard J. Wagner, Brooklyn Legal Services Corp., "A", Brooklyn, NY, for Plaintiffs.

Franklyn H. Snitow, Snitow & Pauley, New York City, Medgar Evers Houses Assoc., L.P., BPC Management Corp., New England Management Corp., Philip Rosenberg, Douglas Rosenberg, Seymour Maslow, Richard Curtis, for defendants.

Zachary W. Carter, United States Attorney, Eastern District of New York, Brooklyn, NY, by Richard Molot, Assistant United States Attorney, for defendant United States, Department of Housing and Urban Development.

MEMORANDUM AND ORDER

GLEESON, District Judge.

The Medgar Evers Houses Tenants Association and 181 tenants bring this action against the Medgar Evers Houses Associates, Limited Partnership ("MEHALP"), BPC Management Corporation ("BPC"), the New England Management Company, Inc. ("New England Management"), and others, claiming violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.*, and New York State Real Property Actions and Proceedings Law (RPAPL) Article 7A, §§ 769-78. The defendants against whom relief is sought[1] have moved to dismiss the RICO claim on the ground that it fails to state a claim upon which relief could be granted. For the reasons set forth below, defendants' motion is granted.

FACTS

Medgar Evers Houses Tenants Association is an unincorporated association of tenants of the Medgar Evers Houses, a federally subsidized, low-income housing project

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[1] The United States Department of Housing and Urban Development ("HUD") and the Department of Housing and Preservation Development of the City of New York ("HPD"), named in the complaint as "co-defendants," are nominal defendants. HUD holds the mortgage on the property at issue and regulates the project, and HPD serves as the municipal agency charged with enforcement of New York City and State housing laws. Neither has taken a position on this motion. Unless otherwise noted, the term "defendants" refers only to MEHALP, BPC, New England Management, and the individual defendants.

consisting of nine buildings in the Bedford-Stuyvesant section of Brooklyn, New York. The individual plaintiffs are the tenants in 181 of the 315 apartment units located in the project. All of them participate in the federal program known as "Section 8" rental assistance.

Defendant MEHALP has owned the Medgar Evers Houses since 1985. Defendant BPC operated and managed the project for MEHALP from approximately 1985 to 1990. Defendant New England Management has operated and managed the project for MEHALP since 1990. The individual defendants are employees of BPC or New England Management.

A. The Statutory and Regulatory Framework

The Section 8 program helps low-income families obtain a wholesome place to live, see 42 U.S.C. § 1437f, furthering the National Housing Act's "goal of a decent home and a suitable living environment for every American family." 42 U.S.C. § 1441. To achieve this goal, HUD provides, among other benefits, mortgage insurance or direct mortgages to the private sector at below-market rates for development or purchase and maintenance of low-income housing for the duration of the mortgage. Section 8 rental assistance consists of monthly rent subsidy payments to the owners of qualifying housing projects, such as Medgar Evers Houses. The government subsidizes that portion of each tenant's total contract rent that exceeds 30% of the tenant's adjusted gross income.

HUD regulates Section 8 properties pursuant to various laws and regulations as well as through a Housing Assistance Payment ("HAP") Contract and a Regulatory Agreement between HUD and the property owner, in this case, MEHALP. Through the HAP Contract and Regulatory Agreement, HUD imposes on owners of Section 8 projects the duty to provide services and maintain the premises in compliance with HUD regulations and in conformity with state and local laws.

The government pays Section 8 rent subsidies on the tenants' behalf directly to the owner upon its (or its agent's) submission of a HUD form known as a "Housing Owner's Certification and Application for Housing Assistance Payments" ("Owner's Certification"). The Owner's Certification requires the owner to sign a statement that provides, in relevant part, that "all required inspections have been completed ... [and] the units for which assistance is billed are safe, decent and sanitary and occupied or available for occupancy." Complaint ¶ 47.

HUD retains the power and authority to replace non-performing management, to withhold subsidy payments and, if necessary, declare a default under the mortgage and regulatory agreement, and to become a "mortgagee in possession" or commence mortgage foreclosure proceedings.

B. The Conditions at the Medgar Evers Houses

HPD serves as the New York City agency responsible for inspecting residential apartment units for violations of various housing and building safety codes. HPD generally

conducts such inspections in response to tenant complaints or housing court disputes in which tenants allege conditions impairing building safety or habitability. Violations issued by HPD inspectors fall into three categories of severity. The most severe are designated "C" violations, issued for conditions that present immediate hazards to the health and/or safety of the tenants. These must be corrected within twenty-four hours. Next in severity are "B" violations, issued for hazardous conditions, which must be corrected within thirty days. The least severe are "A" violations, which cover non-hazardous conditions that must be corrected within six months. Plaintiffs allege that, as of the filing of their complaint in May 1997, a total of 1,595 housing code violations existed at Medgar Evers Houses, of which 1,188 were either "C" or "B" violations.

Between 1990 and the present, HUD has conducted at least six on-site inspections. These inspections found various types of repairs and maintenance needed in many areas, including elevators, exterior walls and foundations, water and sewage systems, insulation, electrical fixtures and systems, and heating systems. The inspectors also found a need for rodent and vermin extermination and a pervasive condition of mold and mildew throughout the project.

C. The Plaintiffs' Claims

Although HUD is named as a "co-defendant" in the complaint, plaintiffs have conceded that it is only a nominal defendant, from which no relief is sought unless the Court orders the dissolution of the RICO "enterprise" and places the project in receivership. See Complaint ¶ 3; Transcript of

Oral Argument, Jan. 9, 1998 ("Tr."), at 18-19. [2] Plaintiffs thus do not assert that federal jurisdiction arises because HUD is a party to this action. Rather, federal jurisdiction rests on their RICO claim and on supplemental jurisdiction under 28 U.S.C. § 1367. The complaint alleges that MEHALP, BPC, New England Management, and the individual defendants constituted an "associated in fact" "enterprise" within the meaning of 18 U.S.C. § 1961(4). Plaintiffs charge those defendants with violating 18 U.S.C. § 1962(c) and (d) by participating and conspiring to participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity consisting of acts of mail fraud and wire fraud. Specifically, plaintiffs allege "three distinct types of mail and/or wire frauds." Complaint ¶ 45.

The first centers on the monthly Owner's Certification filed with HUD. As noted above, each such certification must contain a statement by the project owner that "all required inspections have been completed ... [and] the units for which assistance is billed are safe, decent and sanitary." Plaintiffs allege that in each Owner's Certification since December 1985, MEHALP made that statement knowing it to be false and misleading. The second type of fraud alleged in the complaint consists of statements made by MEHALP to HUD in response to its site inspection reports and management reviews conducted between 1986 and 1997. These letters,

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[2] "Similarly, the New York City Department of Housing and Preservation Development (HPD) is named as a nominal defendant because plaintiffs also assert a supplemental State claim for the appointment of an Article 7-A Administrator...." Complaint ¶ 3.

plans, and other written submissions (six are specified at Complaint ¶ 52) allegedly contained false and misleading statements to HUD regarding repairs and improvements to the project in order to "lull HUD into inaction." Complaint ¶ 54. The third type of fraud alleged by plaintiffs deals with monthly and annual financial reports which MEHALP submitted to HUD. These submissions allegedly contained false statements about MEHALP's costs and expenses in order "to conceal from HUD the 'diversion' and misappropriation of Project funds." Complaint ¶ 56.

Plaintiffs also allege conspiracy and substantive violations of 18 U.S.C. § 1962(b), contending that the defendants maintained their interest in, and control of, the charged enterprise through a pattern of racketeering activity. In addition to the RICO claims, plaintiffs allege violations of the New York Real Property Action and Proceedings Law based on the condition of the apartments in the project. Plaintiffs seek an order (1) dissolving the charged enterprise and placing its assets in receivership; (2) directing the defendants to divest themselves of their interest in the enterprise and in Medgar Evers Houses; and (3) enjoining the defendants from owning or managing public-assisted housing. They also seek treble damages under the RICO statute, an accounting, the appointment of an administrator under the RPAPL, [3] and attorneys' fees.

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[3] Defendants assert that the RPAPL claim is moot in light of a Stipulation and Order dated August 11, 1997, under which HUD became the Mortgagee-In-Possession of the Medgar Evers Houses and Jeffrey Goldstein was appointed a managing agent.

DISCUSSION

A. The Standard for Dismissal Under Rule 12(b)(6)

A federal court's task in determining the sufficiency of a complaint is "necessarily a limited one." *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). The inquiry focuses not on whether a plaintiff might ultimately prevail on her claim, but on whether she is entitled to offer evidence in support of the allegations in the complaint. *Id.* "Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Id.* Rule 12(b)(6) warrants a dismissal only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); *see also Hamilton Chapter of Alpha Delta Phi, Inc. v. Hamilton College*, 128 F.3d 59 (2d Cir.1997). In addition, in ruling on defendant's motion, the Court must accept as true all the factual allegations in the complaint and must draw all reasonable inferences in favor of the plaintiff. *See Hamilton*, 128 F.3d at 59 (citing *Hospital Bldg. Co. v. Trustees of Rex Hosp.*, 425 U.S. 738, 740, 96 S.Ct. 1848, 48 L.Ed.2d 338 (1976)).

B. The RICO Claims

The RICO statute furnishes a private civil action to a person who has been "injured in his business or property by reason of a violation of" 18 U.S.C. § 1962. 18 U.S.C. § 1964(c). In order to prove a violation of § 1962, a plaintiff must prove that the defendant used money derived from a

pattern of racketeering activity to invest in an enterprise, acquired control of an enterprise through a pattern of racketeering activity, or conducted the affairs of an enterprise through a pattern of racketeering activity, or conspired to do any of those things. 18 U.S.C. § 1962(a)-(d). A pattern of racketeering activity requires, inter alia, at least two "acts of racketeering activity." 18 U.S.C. § 1961(5). The acts of racketeering activity alleged here consist of mail fraud and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343, respectively.

1. The § 1962(c) Claim

The Supreme Court has interpreted the "by reason of" language in § 1964(c) as requiring not only actual causation, but proximate cause as well. *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992). Holmes involved a RICO claim brought by the Securities Investor Protection Corporation ("SIPC"), a private nonprofit corporation established pursuant to a federal statute to provide financial protection to the customers of failed broker-dealers who were members of SIPC. SIPC had advanced nearly $13 million to the customers of two such broker-dealers and brought the RICO claim against Holmes and others on the theory that their fraudulent activity had prevented the broker-dealers from satisfying their obligations to those customers, thus triggering SIPC's statutory duty to reimburse those customers. 503 U.S. at 260-64, 112 S.Ct. 1311.

In rejecting SIPC's RICO claim, the Supreme Court focused on the distinction between injuries actually caused by

RICO violations and the narrower category of injuries "proximately" caused by them. The boundaries of the latter category have evolved as the result of a legal policy determination. As the Court put it, "Here we use 'proximate cause' to label generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts. At bottom, the notion of proximate cause reflects 'ideas of what justice demands, or of what is administratively possible and convenient.' " *Id.* at 268, 112 S.Ct. 1311 (quoting W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 41, at 264 (5th ed.1984)). The Court concluded that in the civil RICO context, justice demands that a plaintiff demonstrate a direct relationship between the injury asserted and the RICO violation.

The Court identified several reasons for this directness requirement. First, "the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors." *Id.* at 269, 112 S.Ct. 1311 (citation omitted). Second, extending the private RICO claim beyond the first level of injury would "force courts to adopt complicated rules apportioning damages among plaintiffs" at different levels of injury from the acts of racketeering, in order to prevent the risk of multiple recoveries. *Id.* Finally, the Court observed, there remains little need to address these complex issues, as the ability of directly-injured victims to bring suit generally serves the deterrent purpose of the private civil action. *See id.* at 269-70, 112 S.Ct. 1311.

Guided by these concerns, first expressed in the antitrust context, the Court concluded that SIPC was not a

proper RICO plaintiff. SIPC's claim would require a determination of whether the broker-dealers' customers' losses resulted from the alleged stock manipulation "as opposed to, say, the broker- dealers' poor business practices or their failures to anticipate developments in the financial markets." *Id.* at 273, 112 S.Ct. 1311. Putting that factual causation issue aside, the conferral of a cause of action on those indirectly injured would require the apportionment of the prospective recoveries among the various plaintiffs, "who would otherwise each be entitled to recover the full treble damages." *Id.* at 259, 112 S.Ct. 1311. Finally, "the law would be shouldering these difficulties despite the fact that those directly injured, the broker-dealers, could be counted on to bring suit for the law's vindication." *Id.* at 273, 112 S.Ct. 1311.

Those concerns equally apply to this case. The various false and misleading statements that constitute the acts of racketeering activity were all made to HUD. Plaintiffs do not allege that defendants made any of the representations underlying the mail and wire fraud allegations to the plaintiffs. Indeed, plaintiffs were not even aware of the false statements; in opposing defendants' statute of limitations argument, plaintiffs assert that they did not discover the scheme to defraud HUD until the spring of 1997. Plaintiffs' Mem. at 8.

The second-level injuries plaintiffs claim to have suffered are analogous to those alleged by the SIPC in Holmes and would impose similar burdens on the courts. If this RICO claim proceeds, the fact-finder would be required to determine whether the complained of conditions at the

Medgar Evers Houses in fact resulted from the false statements to HUD, as opposed to, for example, the defendants' poor management of the housing project. Putting that factual issue aside, permitting plaintiffs to maintain a treble damage action would seem to require an apportionment of possible recoveries among the directly defrauded party (HUD) and others indirectly injured by the fraudulent scheme, a group not necessarily limited to the plaintiff tenants.[4] Finally, as in *Holmes*, the law need not shoulder these difficulties. HUD itself can deter fraudulent statements to HUD. Owners who make the fraudulent statements face criminal prosecution under 18 U.S.C. § 1001, *see United States v. Mandanici*, 729 F.2d 914 (2d Cir.1984), and remain subject to civil penalties and other remedies under the HUD regulations.

Plaintiffs rely on the Second Circuit's articulation of the proximate cause requirement in *Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 23-24 (2d Cir.1990). In that case, the court stated that the RICO pattern or act must be a "substantial factor in the sequence of responsible causation,"

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[4] For example, a plumbing contractor with a contract to make the plumbing repairs at the project could allege that, as a result of false statements to HUD that plumbing repairs had been made, it was injured in its business, i.e., but for the fraud, it would have done the repair work. Such a contractor would also face an actual causation hurdle (in the absence of the fraud, would the defendants really have used the contractor to make the repairs?), but would be no further removed from the fraudulent conduct than the plaintiffs.

and the injury must be "reasonably foreseeable or anticipated as a natural consequence" of the defendant's fraudulent conduct. Plaintiffs here argue that the pattern of false representations to HUD enabled the defendants to get and keep federal funds that should have been expended for plaintiffs' benefit, and thus this pattern was a "substantial factor" in a sequence of events causing foreseeable injury to them. *See* Plaintiffs' Mem. at 18-19.

I disagree. Even accepting that the defendants' fraudulent statements to HUD constituted a "but for" cause of the conditions at the Medgar Evers Houses, those conditions were neither reasonably foreseeable when the defendants made the false statements nor the natural consequence of those statements. The racketeering acts allowed the defendants to receive continued, even increased, Section 8 funding. The defendants' failure to use the money to benefit the tenants did not flow from the misrepresentations made to HUD. This failure may have been a foreseeable result of plaintiffs' generalized allegations that defendants misappropriated federal funds, but plaintiffs do not include those allegations among the racketeering acts in the RICO claim. [5]

Second, plaintiff's reliance on *Hecht* ignores the fact that *Hecht* was decided before *Holmes*. Arguably, the proximate cause standard articulated by *Hecht*, and especially

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[5] I do not mean to suggest that the RICO claim would survive if it had included the misappropriations as racketeering acts.

its focus on the foreseeability of injury to the plaintiffs, requires some modification after Holmes, which focused on the directness of that injury. Indeed, it is not clear to me that the SIPC's claim in Holmes would have failed if the Court had applied to it the *Hecht* standard quoted above.

Although the Second Circuit has stated that "Holmes essentially endorsed [Hecht's] definition of proximate cause," *In re American Express Co. Shareholder Litig.*, 39 F.3d 395, 399 (2d Cir.1994), a careful reading of its decisions reveals a refinement of the *Hecht* formulation of the proximate cause requirement.

In *Hecht*, the court held that the plaintiff's injuries were not reasonably foreseeable or the natural consequence of the RICO violations because the plaintiff was "neither the target of the racketeering enterprise nor the competitor[ ] nor the customer[ ] of the racketeer[s]." 897 F.2d at 24 (internal quotations and citations omitted). More recently, the Second Circuit has made explicit a requirement, implied in Hecht and Holmes, that in order for a plaintiff to succeed on a RICO claim, the injuries alleged must be the "preconceived purpose" or the "specifically intended consequence" of the defendants' racketeering, or else they are not the "necessary result" or "foreseeable" consequence of those actions. *In re American Express*, 39 F.3d at 400; *see also Abrahams v. Young, & Rubicam, Inc.*, 79 F.3d 234, 237 (2d Cir.1996) (holding that plaintiff failed to establish RICO claim because he was not "the target of the racketeering enterprise[,] ... [t]hat is to say, [his] injuries did not flow from the harms that the predicate acts ... were intended to cause" (internal quotations

and citations omitted)), *cert. denied*, --- U.S. ----, 117 S.Ct. 66, 136 L.Ed.2d 27 (1996).

Thus, the cases in which RICO claims have failed involve racketeering acts directed at persons other than the plaintiffs. The claim in *Hecht* was brought by an employee who alleged fraudulent acts (such as forging customer signatures on orders and fabricating bills) committed by fellow employees and their agents against their customers. 897 F.2d at 22. In *Manson v. Stacescu*, 11 F.3d 1127 (2d Cir.1993), *cert. denied*, 513 U.S. 915, 115 S.Ct. 292, 130 L.Ed.2d 206 (1994), plaintiffs charged the defendants with numerous criminal acts committed as part of a scheme to loot a company. The plaintiffs, who were shareholders or employees of the company, or guarantors of its debt, lost their RICO claim because their injuries, unlike those of the corporate victim, were indirect. *See id.* at 1132; *see also In re American Express*, 39 F.3d at 399-401 (determining that shareholder derivative RICO claim failed because corporate officers' alleged conspiracy to defame rival company involved criminal acts directed at others, not at corporation); *Abrahams,* 79 F.3d at 238 (stating that intended targets of advertising firm's illegal scheme to obtain foreign account by bribery and other illegal acts were firm's competitors, and thus intended recipient of bribes, who was injured only by fallout from scheme's disclosure, could not maintain RICO claim).

On the other hand, RICO claims survive proximate cause-based motions to dismiss when the plaintiff stands as the target of the racketeering acts. In *GICC Capital Corp. v. Technology Fin. Group, Inc.*, 30 F.3d 289 (2d Cir.1994), *cert. denied*, 518 U.S. 1017, 116 S.Ct. 2547, 135 L.Ed.2d 1067

(1996), for instance, the plaintiff, a creditor of a corporation, brought a RICO claim against defendants who looted the corporation's assets, causing the corporation to default on his note. Although the circumstances in *GICC Capital* appear superficially similar to those in *Manson, supra*, the plaintiff in *GICC Capital* negotiated the note with the defendants while they looted the company and alleged fraudulent behavior directed at him in connection with the issuance of the note. *GICC Capital* at 292-93.

Measured against this standard, the RICO claims here fail. The alleged racketeering acts were "intended to mislead HUD," Complaint ¶ 52, "to lull HUD into inaction and induce it to forego punitive and/or remedial enforcement actions against MELHAP," Complaint ¶ 54, and "to conceal from HUD the 'diversion' and misappropriation of Project funds," Complaint ¶ 56. By plaintiffs' own formulation of their claim, HUD was the sole target of the alleged misrepresentations, and defendants induced HUD alone to part with millions of dollars. The plaintiffs were "not the intended targets of the RICO violations." *In re American Express*, 39 F.3d at 400; *see also In re Crazy Eddie Securities Litig.*, 714 F.Supp. 1285, 1291 (E.D.N.Y.1989) (dismissing RICO claim where racketeering acts were "directed not at Crazy Eddie but at the shareholders and the investing public.").

Plaintiffs rely on *Trautz v. Weisman*, 819 F.Supp. 282 (S.D.N.Y.1993), in which the residents of a facility for mentally ill adults alleged that a pattern of mail fraud involving misrepresentations made by the facility's owners to the New York State Department of Social Services ("DSS") proximately caused their injuries. Specifically, the defendants

misrepresented to DSS that the squalid conditions that existed at the facility would be corrected, when the real purpose of those assurances was to maintain the facility's operating certificate. Proximate cause for the RICO claim was satisfied, according to Judge Goettel, because the operating certificate, procured by fraud on the DSS, resulted in the residents' Supplemental Social Security Income ("SSI") benefits being higher, thereby allowing the defendants to charge the residents a higher monthly fee for substandard care. Judge Goettel concluded that "it was the residents ... who were intended to be the ultimate targets of defendants' alleged scheme. Fraudulently securing renewals of the operating certificate was only a necessary step in eventually parting the ... residents from their SSI monies." *Id.* at 287.

I respectfully disagree with Judge Goettel's decision in *Trautz*. He based it on a premise not justified by the proximate cause requirements of *Holmes* (which the *Trautz* opinion does not mention). Judge Goettel concluded that the plaintiff residents were the "alleged targets of the racketeering enterprise," *Trautz* at 287, ignoring the requirement that the "compensable injury necessarily is the harm caused by the predicate acts." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985) (emphasis added). *See also Hecht*, 897 F.2d at 21 ("[T]he RICO pattern or [racketeering] acts must proximately cause plaintiff's injury."). In short, the conclusion in *Trautz* that injury by the "racketeering enterprise" is sufficient to confer RICO standing ignores the "direct-injury limitation" adopted by Congress

when it enacted 18 U.S.C. § 1964(c). *Holmes*, 503 U.S. at 272, 112 S.Ct. 1311.[6]

2. The 1962(b) Claim -

Even if plaintiffs had alleged injuries resulting directly from the racketeering acts, more would be required to sustain their 1962(b) claim. Essentially, that section prohibits racketeers from muscling in on enterprises. The RICO plaintiff must therefore allege a distinct injury caused by the defendants' acquisition or maintenance of an interest in or control of an enterprise. *See Discon, Inc. v. NYNEX Corp.*, 93 F.3d 1055, 1062-63 (2d Cir.1996). Here, the alleged enterprise is the association of the defendants themselves. *See* Complaint ¶ 61. They are alleged to have "maintained their interest in and control of said enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(b)." Complaint ¶ 64.

First, the claim must fail because plaintiffs do not allege any facts to support a finding that the defendants' "interest" in their "association" was acquired or maintained through the pattern of racketeering activity. *See Discon*, 93

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[6] I assume, without deciding, that the reliance element of the plaintiffs' mail and wire fraud racketeering acts is established by HUD's reliance on the fraudulent statements. *See Cement and Concrete Workers Dist. Council Welfare Fund v. Lollo*, 148 F.3d 194, 196-97 (2d Cir.1998). The reliance element of a fraud claim is distinct from the proximate cause element of a civil RICO cause of action.

F.3d at 1062. Second, plaintiffs have failed to allege injury stemming from the defendants' acquisition or maintenance of that interest. *See id.* at 1063. Accordingly, the § 1962(b) claim must fail.

3. The 1962(d) Claims

Since I have held that the § 1962(b) and (c) claims do not state a cause of action, the RICO conspiracy claims, based solely on alleged agreements to commit the aforementioned acts, must be dismissed as well. *See Discon*, 93 F.3d at 1064.

C. The State Law Claim

Plaintiffs assert a state law claim seeking the appointment of an administrator to manage the Medgar Evers Houses. In light of the dismissal of the federal claims, it is appropriate to decline jurisdiction over these state claims. 28 U.S.C. § 1367(c)(3). *See also United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966) ("Certainly if the federal claims are dismissed before trial ... the state claims should be dismissed as well."); *Block v. First Blood Assocs.*, 988 F.2d 344, 351 (2d Cir.1993) (finding no abuse of discretion to dismiss state law discrimination claims where all federal claims had been dismissed before trial).

CONCLUSION

The plaintiff's allegations, which I accept as true, cry out for relief. There may well be an avenue for such relief in state court, as plaintiffs' counsel acknowledged during oral argument. For the reasons stated above, however, the civil

RICO cause of action is not a proper vehicle for these allegations.[7] The motion to dismiss is granted.

The Clerk of the Court is advised that this Order closes the case.

So Ordered.

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[7] Defendants raise various additional challenges to the RICO claims, which need not be addressed here.

UNITED STATES CODE ANNOTATED
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES CHAPTER 96--RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Current through P.L. 106-55, approved 8-17-99

§1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the

procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer

programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain;

* * *

UNITED STATES CODE ANNOTATED
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES

CHAPTER 96--RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Current through P.L. 106-55, approved 8-17-99

§1962. Prohibited activities

* * *

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

* * *

UNITED STATES CODE ANNOTATED
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES
CHAPTER 96--RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Current through P.L. 106-73, approved 10-19-1999

§ 1964. Civil remedies

* * *

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

* * *

UNITED STATES CODE ANNOTATED
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES
CHAPTER 63--MAIL FRAUD

Current through P.L. 106-55, approved 8-17-99

§1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

UNITED STATES CODE ANNOTATED
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES
CHAPTER 63--MAIL FRAUD

Current through P.L. 106-55, approved 8-17-99

§1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 8--LOW-INCOME HOUSING
SUBCHAPTER I--GENERAL PROGRAM OF ASSISTED HOUSING

Current through P.L. 106-55, approved 8-17-99

§1437f. Low-income housing assistance

(a) Authorization for assistance payments

For the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

* * *

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments

* * *

(4) The assistance contract shall provide that assistance payments may be made only with respect to a dwelling unit under lease for occupancy by a family determined to be a lower income family at the time it initially occupied such dwelling unit, except that such payments may be made with respect to unoccupied units for a period not exceeding sixty days (A) in the event that a family vacates a dwelling unit before the expiration date of the lease for occupancy or (B) where a good faith effort is being made to

fill an unoccupied unit, and, subject to the provisions of the following sentence, such payments may be made, in the case of a newly constructed or substantially rehabilitated project, after such sixty-day period in an amount equal to the debt service attributable to such an unoccupied dwelling unit for a period not to exceed one year, if a good faith effort is being made to fill the unit and the unit provides decent, safe, and sanitary housing. No such payment may be made after such sixty-day period if the Secretary determines that the dwelling unit is in a project which provides the owner with revenues exceeding the costs incurred by such owner with respect to such project.

* * *

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER VIII--OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (SECTION 8 HOUSING ASSISTANCE PROGRAMS, SECTION 202 DIRECT LOAN PROGRAM, SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY PROGRAM AND SECTION 811 SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES PROGRAM)
PART 886--SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM--SPECIAL ALLOCATIONS
SUBPART A--ADDITIONAL ASSISTANCE PROGRAM FOR PROJECTS WITH HUD-INSURED AND HUD-HELD MORTGAGES
Current through January 1, 2000; 64 FR 73853

§ 886.108 Maximum annual contract commitment.

* * *

(c) Project Account. In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

(1) A Project Account shall be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under Section 8(c)(6) of the Act, out of amounts by which the maximum annual Contract commitment per year exceeds amounts paid under

the Contract for any year. This account shall be established and maintained by HUD for each project as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments, and (ii) other costs specifically authorized or approved by the Secretary.

* * *

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER II--OFFICE OF ASSISTANT SECRETARY FOR HOUSING--FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SUBCHAPTER A--GENERAL
PART 200--INTRODUCTION TO FHA PROGRAMS
SUBPART H--PARTICIPATION AND COMPLIANCE REQUIREMENTS
PREVIOUS PARTICIPATION REVIEW AND CLEARANCE PROCEDURE
Current through January 1, 2000; 64 FR 73853

§ 200.219 Content of certification.

(a) Each principal who executes the certificate certifies that:

(1) The certificate contains a listing of every assisted or insured project of HUD, Farmers Home Administration and State or local government housing finance agencies in which the principal has been or is now a principal;

(2) For a period beginning 10 years prior to the date of the certificate under review and except as shown on the certificate;

(i) No mortgage on a project listed has ever been in default nor has mortgage relief been given;

(ii) There have been no defaults or noncompliances under any conventional construction contract or Turnkey contract of sale in connection with a public housing project;

(iii) There are no known unresolved findings raised as a result of HUD audits, management reviews or other governmental investigations;

(iv) There has been no suspension or termination of payments under any HUD assistance contract attributable to the fault or negligence of principal;

(v) The principal has not been convicted of a felony (See definitions § 200.215(b)) and is not presently the subject of a complaint or indictment charging a felony;

(vi) The principal has not been suspended, debarred, or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;

(vii) The principal has not defaulted on an obligation covered by a surety or performance bond, and has not been the subject of a Claim under an employee fidelity bond;

(3) The principal has listed all parties who are known to him to be principals under § 200.215(e)(2);

(4) The principal is not a HUD employee or a member of an employee's immediate household as defined by HUD's Standards of Conduct in 24 CFR O.735-205(c);

(5) Except as shown on the certificate under review, the principal is not a participant (i) in a HUD assisted or insured project on which construction, as of the date of said certificate, has stopped for a period in excess of twenty days or; (ii) in an insured project on which construction, as of the date of said certificate, has been substantially completed for more than 90 days and documents for closing, including cost certification, have not been filed with HUD;

(b) The project owner shall certify that he has also listed all other parties who are principals under § 200.215(e)(1).

(c) If a principal cannot certify as to any items under paragraphs (a) and (b) of this section, such items may be deleted from the face of the certificate and a full explanation of the reason for the deletion, signed by the principal, may be attached to the certificate for HUD's review, evaluation and determination.

(d) Each principal who executes the certificate must also certify that said principal is not a Member of Congress or a Resident Commissioner.

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER II--OFFICE OF ASSISTANT SECRETARY FOR HOUSING--FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SUBCHAPTER B--MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING
ACT AND OTHER AUTHORITIES
PART 265--TRANSFER FROM NONPROFIT TO PROFIT-MOTIVATED OWNERSHIP FOR MULTIFAMILY HOUSING PROJECTS WITH HUD-INSURED OR HUD-HELD MORTGAGES
45 FR 54205, Aug. 14, 1980

§ 265.10 Criteria for approval.

(a) The proposed purchaser and its principals shall, to the Director's satisfaction, meet the following criteria as supported by written findings of fact:

* * *

(2) Show the ability to provide sound project management, especially sound physical and financial management. Employing a local management agent is strongly encouraged. If a proposed management agent is not local, the agent shall show evidence of its capacity to manage a project successfully outside the area of its principal place of business.

* * *

(4) Show an overall capacity, including financial capacity as determined by the Commissioner, to operate the project successfully for the remaining term of the mortgage. The involvement of the owner in other multifamily housing projects will be considered in making this determination.

* * *

OCCUPANCY REQUIREMENTS OF SUBSIDIZED MUTLI-FAMILY HOUSING PROGRAMS
Directive Number 43503 Chg. 15

CHAPTER 6. BILLING FOR ASSISTANCE PAYMENTS

SECTION 1. GENERAL INFORMATION

* * *

6-6. OWNER/AGENT MUST CERTIFY FORMS

A. Signing forms certifies:

- Assistance payments, recertifications, and special claims are computed accurately.
- All inspections have been completed i.e., move-in, move-out.
- Units are decent, safe, and sanitary.
- Assistance payments have not been billed or paid previously.
- Facts and data reported are actual and timely.
- Payments have not been received form the tenant or other sources beyond that authorized in the assistance contract or the lease, except as permitted by HUD.

NOTE: Owners/agents are not eligible for assistance payments until form HUD 50059 is signed by both owner/agent and tenant on or before the effective date of the form HUD 50059.

B. "Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000, or imprisoned for up to 5 years, or both".

C. Warning: 31 U.S.C. 3729 provides a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages for any person who knowingly presents, or causes to be presented, a false or fraudulent claim; or who knowingly makes, uses, or causes to be used, a false record or statement; or conspires to defraud the Government by getting a false or fraudulent claim allowed or paid.

D. Owners/agents are also warned that false statements or false certifications may lead to the imposition of:

(1) Penalties and assessments under the Program Fraud Civil Remedies Act as implemented by HUD's Regulations, 24 CFR Part 30.

(2) Civil money penalties under the HUD Reform Act of 1989, as implemented by HUD's Regulations, 24 CFR Part 28.

(3) Administrative sanctions by HUD pursuant to CFR Part 24.